

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

THOMAS JESSE WARD,

Petitioner,

v.

DAVID BUSS, Warden,

Respondent.

Case No. CIV-23-146-JFH-GLJ

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO
RESPOND TO PETITION FOR WRIT OF HABEAS CORPUS**

Comes now Respondent, through Counsel, and respectfully requests an extension of time to respond to Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254. On May 10, 2023, this Court entered an Order directing Respondent to file a Rule 5 answer to the Petition, or in the alternative, a motion to dismiss, within thirty (30) days—*i.e.*, on or before June 9, 2023. Doc. 41. In that Order, this Court recognized that an extension of time may be granted for good cause, and in no event longer than an additional twenty (20) days. Doc. 41. Respondent respectfully requests an additional twenty (20) days, or until June 29, 2023, within which to respond as required by that Order. In support of this Motion, Respondent shows this Court the following.

1. As stated above, pursuant to this Court's Order, Respondent must respond to the Petition on or before June 9, 2023.

2. No previous extension of time has been requested of this Court by Respondent to respond to the Petition.

3. Since receiving the habeas Petition in this case, undersigned counsel, AAG Joshua R. Fanelli, has been involved in the following matters:

- AAG Fanelli is an attorney in the Capital Unit within Criminal Appeals, which has required his involvement in preparation for multiple upcoming execution dates. Specifically, AAG Fanelli is lead counsel for the State in clemency and execution proceedings for *Jemaine Monteil Cannon v. The State of Oklahoma*, Oklahoma Court of Criminal Appeals (OCCA) Case No. D-1996-369. On June 7, 2023, AAG Fanelli represented the State, and presented argument as lead counsel, at Cannon's clemency hearing before the Oklahoma Pardon and Parole Board. Prior to that, on May 24, 2023, AAG Fanelli submitted the State's clemency packet, which spanned 216 combined pages of brief and demonstrative exhibits. That packet was distributed to the Pardon and Parole Board, opposing counsel, Governor J. Kevin Stitt, and the media. This responsibility consumed much of AAG Fanelli's time over the last few months, but especially in the month of May.
- AAG Fanelli is lead counsel for the State in the capital case of *Derek Don Posey v. The State of Oklahoma*, OCCA Case Nos. D-2019-542 and PCD-2019-609. AAG Fanelli is currently working on a response to Mr. Posey's capital post-conviction application, due to be filed on July 7, 2023.
- On May 4, 2023, AAG Fanelli appeared on behalf of the State at an evidentiary hearing, on remand to the District Court of Oklahoma County, in the case of *Timothy Ryan Bowie v. The State of Oklahoma*, OCCA Case No. F-2021-371. This required pre-hearing preparation, including sending subpoenas to twelve (12) witnesses, as well as questioning each of those witnesses (and presenting argument to the court) at that hearing. Following the preparation of that transcript, AAG Fanelli has been working with co-counsel to prepare written proposed findings of fact and conclusions of law, which are due to the District Court on June 12, 2023. The State's supplemental brief after remand will be due to be filed in the OCCA twenty (20) days after the District Court's findings are filed in the OCCA (making this deadline expected sometime in late June).

- AAG Fanelli is also working on a Response to Petitioner's Post-Conviction Appeal in *Sonia Weidenfelder v. The State of Oklahoma*, OCCA Case No. PC-2022-1122. This response is due on June 20, 2023.
- AAG Fanelli is writing the Brief of Appellee in *Jerry Lee Irwin v. The State of Oklahoma*, OCCA Case No. F-2022-741. This will be due to be filed on July 7, 2023, after two extensions of time.
- In addition to the above matters, AAG Fanelli has recently filed the following briefs or motions: (1) On June 5, 2023, AAG Fanelli filed the Brief of Appellee in *Richard Rasheed Smith v. The State of Oklahoma*, OCCA Case No. F-2022-741; (2) On May 10, 2023, AAG Fanelli filed the Brief of Appellee in *David Anthony Combs v. The State of Oklahoma*, OCCA No. F-2022-546; (3) On May 4, 2023, AAG Fanelli filed a Special Appearance and Motion to Dismiss Petition for Writ of Habeas Corpus in *Jonathan Graham v. The State of Oklahoma*, District Court of Cleveland County Case No. WH-2023-5.
- AAG Fanelli is the coordinator for the legal intern program at the Oklahoma Attorney General's Office. This requires him to serve as a point of contact for the summer interns in the office. AAG Fanelli is also the peer reviewer for the written work of one (1) legal intern within the Criminal Appeals Unit this summer. Together, they are assigned and working on the following cases: (1) *Stanley Derrick Ragin v. The State of Oklahoma*, OCCA Case No. RE-2022-1052, Brief of Appellee due June 17, 2023; (2) *Dennis Lowell Washa v. The State of Oklahoma*, OCCA Case No. RE-2022-1128, Brief of Appellee due July 2, 2023; (3) *Nolberto C. Camacho v. The State of Oklahoma*, OCCA Case No. RE-2022-913, Brief of Appellee due July 7, 2023; and (4) *Cody Don Everett v. The State of Oklahoma*, OCCA Case No. RE-2023-109, Brief of Appellee due July 29, 2023.

4. Since receiving the habeas Petition in this case, undersigned counsel, AAG Theodore M. Peeper, has been involved in the following matters:

- AAG Peeper is currently writing briefs in the following cases before the Oklahoma Court of Criminal Appeals: *Ian James Groshong v. State*, OCCA Case No. F-2022-231, Brief of Appellee due June 24, 2023, after two extensions of time; *Dallas Christopher Norton v. State*, OCCA Case No. F-2022-746, Brief of Appellee due June 11, 2023; *Corey Dewayne Moreland v. State*, OCCA Case No. RE-2022-698, Brief of Appellee due June 19, 2023, after one extension of time; and *Earl Wayne Bell, II v. State*, OCCA Case No. F-2022-690, Brief of Appellee due July 5, 2023, after two extensions of time.
- In addition to the above matters, AAG Peeper has recently filed the following briefs or motions: (1) On May 22, 2023, AAG Peeper filed a brief with the OCCA in *Jerome Shane Lands v. State*, OCCA Case No. RE-2022-582; (2) On May 4, 2023, AAG Peeper filed a Special Appearance and Motion to Dismiss Petition for Writ of Habeas Corpus in *Earnest W. Draper v. The State of Oklahoma*, District Court of Cleveland County Case No. WH-2023-4.
- AAG Peeper is also the peer review team leader for three (3) other attorneys and has reviewed numerous briefs and motions in the past thirty (30) days as part of the peer review process.
- Furthermore, AAG Peeper is the peer reviewer for the written work of one (1) legal intern within the Criminal Appeals Unit this summer. Together, they are assigned and working on the following cases: (1) *Brian Dale Hasbell v. State*, OCCA Case No. RE-2023-39, Brief of Appellee due June 16, 2023; (2) *Ryan L. Boyd v. State*, OCCA Case No. RE-2022-895, Brief of Appellee due July 7, 2023; (3) *Ray Blaine Jr. v. State*, OCCA Case No. RE-2022-1004, Brief of Appellee due July 10, 2023; and (4) *Thomas James Grabel*, OCCA Case No. RE-2022-993, Brief of Appellee due July 21, 2023.

5. On June 6, 2023, AAG Fanelli communicated by email with Mr. Mark Barrett, an attorney for Petitioner, and inquired as to whether Petitioner has any objection to a twenty (20)

day extension of time for the State to respond. On that same day, Mr. Barrett indicated in writing that he has no objection to this extension request.

6. This Motion is made in good faith and not for the purpose of any delay.

Respectfully submitted,

GENTNER F. DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

X I hereby certify that on June 8, 2023, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing.

X I hereby certify that on June 8, 2023, I electronically transmitted the attached document to the following ECF registrants using the ECF System for filing:

Mark H. Barrett
Daniel G. Webber, Jr.
Ryan Whaley
Gregory Swygert
Robert N. Hochman
David H. Hoffman
John G. Levi
Emily Scholtes
Matthew Binder
William Lawrence

Attorneys for Petitioner

s/ Joshua R. Fanelli
Assistant Attorney General